

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 32**

(Santa Cruz, CA)

RENAISSANCE SENIOR LIVING
MANAGEMENT, INCORPORATED

Employer

and

Case No. 32-RC-5265

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 415, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

The Employer, Renaissance Senior Living Management, Incorporated, operates Sunshine Villa, an assisted living facility located in Santa Cruz, California. The Petitioner, Service Employees International Union, Local 415, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of full-time and regular part-time receptionists employed at the Employer's Santa Cruz facility, excluding all supervisors, guards and other employees.¹ A hearing officer of the Board held a hearing in this case, and the parties filed briefs, which I have duly considered.

As evidenced at the hearing and in the parties' briefs, the only issue in dispute is whether the Employer's receptionists are guards under the Act.² The Employer contends that its receptionists are guards within the meaning of the Act, and that because the Petitioner admittedly represents and admits to membership non-guards the Petitioner is prohibited from representing its receptionists under Section 9(b)(3) of the Act. Based on the foregoing, the Employer contends that the petition should be dismissed. The Petitioner contends that the receptionists are not guards within the meaning of the Act and that the Petitioner is not precluded from representing them under Section 9(b)(3) of the Act.

I have considered the evidence and arguments presented by the parties and, as discussed below, I have concluded that the Employer's receptionists are not guards

¹ At the hearing, the parties stipulated that managerial employees should be added to the list of those excluded from the unit.

² The parties agreed that there are no other issues in dispute with regard to the processing of this petition, and they agreed that the Employer's remaining employees are covered by a collective-bargaining unit that is the subject of another Board petition.

within the meaning of the Act. Accordingly, I have directed an election in a unit that consists of approximately 4 employees. To provide a context for my discussion of this issue, I will first provide an overview of the Employer's operations and the receptionist position. Then, I will present in detail the facts and reasoning that support my conclusion on this issue.

I. THE EMPLOYER'S OPERATION AND THE RECEPTIONIST POSITION

The Employer provides assisted living services to individual residents at its "Sunshine Villa" facility located in Santa Cruz, California. The facility has 106 living units for residents aged 60 years or older, and many of these residents are non-ambulatory or have Alzheimer's disease or some other form of dementia. The Employer provides its residents with room and board, housekeeping services, and all manner of personal care including feeding, bathing, dressing, moving and medicating.

As of the date of the hearing, the person responsible for managing Sunshine Villa was Deann Daniels, the Interim Executive Director.³ In addition to its managerial/supervisory staff, the Employer also employs personal care providers (PCPs), maintenance employees, waitpersons, and four receptionists. The receptionists are supervised by the Employer's Administrative Assistant, Elena Leon.⁴ The receptionists work at the front desk in the main entrance of the Employer's facility and, according to their written job description, are primarily responsible for greeting all residents, family members and visitors and answering telephone calls in a friendly manner. When residents and visitors attempt to enter or leave the facility, the receptionist on duty requires them to sign in and out of a logbook. Receptionists are instructed to deny entry to unauthorized persons, which includes solicitors, former employees, family members whom residents do not want to see and anyone else that the Employer has determined should be denied entry. In this regard, if there were a problem getting an unauthorized person to leave the facility, the receptionists are authorized to call management and the police in order to resolve the problem. Similarly, because at least some residents are not permitted to leave the facility unattended, receptionists are responsible to make sure that these residents do not exit the facility through the main entrance unattended. Receptionists are also responsible for answering all calls to the Employer's main telephone number, transferring calls, taking and delivering messages, completing typing and other general administrative duties, maintaining the cleanliness and appearance of the main entrance and reception area, maintaining office supply inventory, sorting and distributing mail, routing special deliveries, maintaining resident files, accepting and reporting residents' maintenance requests, scheduling residents' in-room meal deliveries and use of the facility's private dining room, accepting monthly payments for services,

³ Daniels also serves as the Employer's Senior Executive Director for the Northwest Region.

⁴ There is evidence that Leon also oversees the hiring of the receptionists, and the parties stipulated at the hearing that Leon is a supervisor as defined by the Act. Leon does not supervise any other employees. I therefore find that Leon is a supervisor within the meaning of Section 2(11) of the Act, and she is excluded from the unit in this case.

placing resident wake up calls, maintaining lost and found articles and assisting with other activities or duties as requested.

The receptionists are also responsible for monitoring the Employer's alarm panel, which is located at the front desk. The panel consists of lights that are illuminated when triggered by a patient's call for assistance, a door connected to the alarm system is opened, a smoke alarm is set off, or a resident wearing a "wander guard" walks out of an unarmed door. All doors at the Employer's facility are connected to an alarm system. The alarm at the main entrance is unarmed during hours when the facility is open to the public. All other doors are always armed. Receptionists have a key to the front door and are responsible for locking it and unlocking it when the facility opens and closes to the public. When an alarm goes off, a light on the alarm panel is illuminated and the receptionist uses a walkie-talkie to announce the alarm and to request that the employee nearest to the alarm event investigate and resolve the alarm. If no employee responds, the receptionist reports the alarm to a manager or supervisor who investigates and resolves the alarm or covers the front desk while the receptionist investigates and resolves the alarm. The Employer's alarm system is especially important to prevent patients with dementia or Alzheimer's disease from leaving the facility unattended. Receptionists note alarm events, disturbances and other reasonably significant events in a general logbook, which is utilized by the entire staff of the facility to report incidents and to send messages to other staff members.

The front desk must be staffed at all times. The Employer's one full-time and 3 regular part-time receptionists cover the front desk, in a shift of one receptionist at a time, from 6:30 a.m. to 10:30 p.m. From 10:30 p.m. to 6:30 a.m., a PCP is responsible for the receptionist's duties. Similarly, when receptionists take their breaks or need to leave the front desk area for some reason, the receptionist's duties are covered by a PCP, manager, supervisor or other employee.

The receptionist is an entry-level position, which pays between \$8 and \$9 per hour and requires only a high school diploma, or its equivalent. State law requires that all of the Employer's employees, including its receptionists, be fingerprinted and pass a background check. There is no evidence indicating that the receptionists are required to have any experience as guards, or that they receive any guard or security oriented training from the E. There is also no evidence showing that the receptionists wear guard uniforms, carry weapons, or patrol the Employer's premises.

II. POSITION OF THE PARTIES

As noted above, the Petitioner seeks to represent a unit of all full-time and regular part-time receptionists employed at the Employer's Santa Cruz facility, excluding all supervisors, managers, guards and other employees. The Employer contends that its receptionists are guards within the meaning of the Act, and because the Petitioner admittedly represents and admits to membership non-guards the Petitioner is prohibited from representing its receptionists under Section 9(b)(3) of the Act. Based on the foregoing, the Employer contends that the petition should be dismissed. The Petitioner contends that the receptionists are not guards within the meaning of the Act and therefore

the Petitioner is not precluded from representing them under Section 9(b)(3) of the Act. The parties stipulated at the hearing that the Union does not represent guards, as defined by Section 9(b)(3) of the Act.

III. ANALYSIS

The Parties agree that the only issue in this case is whether the Employer's receptionists are guards within the meaning of the Act.⁵ Section 9(b)(3) of the Act describes a guard as "an individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises." The Employer contends that the main responsibility of the receptionists is to enforce the rules of the Employer and thereby to ensure the safety of the facility and the safety of residents and employees residing within it, and, as such, are guards under the Act. In support of this contention, the Employer relies primarily on the receptionists' duties related to monitoring the alarm system, reporting and noting alarm events, screening visitors to the facility, preventing unauthorized exits through the main entrance to the facility, and locking and unlocking the facility's main entrance. The Employer does not contend, and the record does not show, that the receptionists play a significant role in enforcing the Employer's rules with regard to the Employer's other employees.

With regard to the receptionists' role in monitoring ingress and egress through the main entrance of the facility, the Employer emphasized that the receptionists are ensuring the safety of the facility and residents by asking visitors and residents to sign in and out, asking unauthorized visitors to leave, making sure that residents do not go out the front door unattended, and locking and unlocking the front door when the facility opens and closes to the public. In prior cases, the Board has repeatedly found that such duties, without the presence of more traditional guard duties, do not confer guard status upon employees. See *Id.* at 798; *55 Liberty Owners Corp.*, 318 NLRB 308 (1995); *Hoffman Security*, 302 NLRB 922, 922-923 (1991); *Ford Motor Company*, 116 NLRB 1995, (1996). I note that the receptionists here do not have any of the following traditional guard duties: issuing passes or badges to visitors, inspecting visitor's person or belongings, or inspecting packages delivered to the facility. The receptionists receive no training in security matters or in the use of force or weaponry, and they are not expected to resist in any way if a person denied entrance refuses or otherwise poses a danger to facility or its occupants or expected. Rather, receptionists, like all other employees, are instructed to report disturbances or threats to a supervisor or contact 911, as needed. While receptionists do lock and unlock the front door, other employees have keys to the doors, including maintenance employees and supervisors. Moreover, receptionists wear identification badges reading "receptionist," and are not held out to the public or fellow employees as guards. They do not wear guard like uniforms, do not carry weapons, and do not patrol the facility or physically inspect or secure the property itself. Again, Board

⁵ If it were determined that the receptionists are guards, the parties agree that the Union would not be eligible to represent the employees. The parties stipulated that the Union represents non-guard employees. Section 9(b)(3) of the Act, provides that labor organizations which admit non-guard employees into membership may not be certified as the collective-bargaining representative of a unit of guards.

precedent has consistently held that such factors weigh against a determination that receptionists are guards under the Act. See *Wolverine*, above, 321 NLRB at 798; *55 Liberty Owners Corp.*, 318 NLRB 308 (1995); *Hoffman Security*, 302 NLRB 922, 922-923 (1991); *Ford Motor Company*, 116 NLRB 1995, (1996).

The Employer urges that the receptionists' duties of monitoring the alarm panel, reporting alarms and recording alarm events in a logbook requires a finding that they are guards under the meaning of the Act. However, the receptionists' duties are limited to reporting the events to others and insuring that other employees respond to the alarm. Only if no other employee responds to the alarm, do receptionists ask a supervisor to investigate the alarm or to cover the front desk while the receptionist investigates the alarm. When responding to an alarm, receptionists are expected to take the same action as any other employee responding to any alarm and are not expected to use force or additional measures to protect the property. I note that most of the Employer's other employees, including managers, maintenance employees and PCPs are trained on the alarm panel and regularly fill in for receptionists in monitoring the panel. While the receptionists' monitoring of the alarm panel assists the Employer's staff in securing the safety of residents by alerting others when a resident has wandered off unattended and by notifying others of fires or other events, I do not find that their duties in this regard are sufficient to confer guard status upon them in the absence of other guard duties. In this regard, while the receptionists' duties related to making entries about security breaches, alarm events and unlocked doors in a logbook may be similar to traditional guard duties of recording disturbances, I note that receptionists are not asked to fill out any incident reports beyond the short notations in the general logbook and that other non-guard employees are expected to make entries about disturbances into the logbook as well. Moreover, the logbook entries are also used to record the everyday mundane activities of the facility, including such things as: resident wake up call requests, the delivery of packages, the scheduling of residents' medical appointments, employees calling in sick, residents' requests for longer movies, and maintenance requests.

The Employer cites *A.W. Schlesinger Geriatric Center*, 267 NLRB 1363 (1983), *Crossroads Community Correctional Center*, 308 NLRB 558 (1992) and *Allen Service Company*, 314 NLRB 1060 (1994) to support its contention that the receptionists' responsibility to report security problems are sufficient to confer guard status upon the receptionists. However, in none of those cases did the Board find that a reporting function alone, without other significant security-related responsibilities, could confer guard status. Moreover, these cases did not involve employees with clerical or administrative assignments.

For instance, in *A.W. Schlesinger*, the disputed maintenance employees were hired with the specific intent of meeting security needs and were responsible for assuring the safety of employees arriving for and leaving from work. They spent 50 to 70 percent of their time doing security functions including: locking and unlocking doors and gates; observing and securing personnel during shift changes; scrutinizing the contents of packages; making hourly rounds of the Employer's facility and checking lights in the parking lot and other areas. *A.W. Schlesinger* above at 1363-1364. In *Allen Service*, the

basic function of the disputed “security personnel” employees was to sit in an office on the weekends; observe a railway yard and equipment to insure that no unauthorized people entered the yard or climbed on or vandalized railway equipment. *Allen Service Company*, above at 1062. In *Crossroads*, the Employer's Correctional Residence Counselors were employed to secure inmates at a work release residence, they transported inmates from prison to the Employer's facility, accompanied inmates to court and the cafeteria and insured that the inmates did not escape. The Counselors were stationed in a control room observing the premises through monitors, searched and "frisked" all persons/employees entering the facility, surveyed the parking lots and searched vehicles, performed resident head counts, investigated suspicions of inmate wrongdoing, conducted room "shake downs" in search of contraband, were authorized to search entire floors, responded to alarms when an alarmed door was opened, investigated and filled out incident reports when there had been a false alarm or inmate escape and initiated investigations if they found damage to or theft of the Employer's property. *Crossroads*, above, 308 NLRB at 559-561. The employees in those cases were primarily engaged in carrying out a variety of traditional guard/security duties, and therefore these cases are clearly distinguishable from the duties of the receptionists in this case which were limited to occasional monitoring/reporting duties. As noted above, I find the receptionists' limited guard like duties - none of which are even mentioned in the position's job description - to be incidental to their primary receptionist' duties, which are essentially clerical and administrative in nature.

Finally, I find unpersuasive the Employer's attempt to distinguish the many cases in which the Board has found receptionists not to be statutory guards. In particular, the Employer states that in all of the Board cases in which the receptionists were found not to be guards, the employers had some other form of clearly recognized security personnel in addition to the receptionists. First, I note that the Board did not state in those cases that the presence of other guards/security personnel was a dispositive factor in deciding that the receptionists were not guards. Second, I note that the determination of statutory guard status is determined by the actual duties performed by the employees in question, not the fact that an Employer may or may not have other employees performing other guard-like duties. Third, in *55 Liberty Owners Corp.*, 318 NLRB 308, the Board was considering the guard status of doorpersons and elevator operators who had building access/monitoring duties similar to those of the receptionists in this case. In *55 Liberty*, the Board stated that the employers did not have any security guards on the premises, but it still found that the building access/monitoring duties of these employees was insufficient to make them guards.⁶

For the reasons set forth above, I conclude that the receptionists are not guards within the meaning of Section 9(b)(3) of the Act and that the Petitioner is eligible to serve as the receptionists' representative for purposes of collective bargaining, if selected to do so by the employees in the unit.

⁶ The Board also noted that the *55 Liberty* case was similar to the *Ford Motor Co.* case, 116NLRB 1995 (1956), a case in which the Board held that the receptionists were not guards. *55 Liberty Owners Corp.*, above at 310.

IV. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time receptionists employed by the Employer at its Santa Cruz, California facility; excluding all other employees, guards, supervisors and managers as defined in the Act.

There are approximately 4 employees in the unit found appropriate.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Service Employees International Union, Local 415, AFL-CIO. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit

employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before **July 8, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (510) 637-3315. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995).

Failure to do so estops employers from filing objections based on nonposting of the election notice.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **July 15, 2004**. The request may **not** be filed by facsimile.

Dated: July 1, 2004

Michael H. Leong, Acting Regional Director,
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Classification Index

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